

111TH CONGRESS  
1ST SESSION

# S. 732

To amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams.

---

## IN THE SENATE OF THE UNITED STATES

MARCH 26, 2009

Mr. AKAKA (for himself, Mr. SPECTER, Mr. CARDIN, Mr. SCHUMER, Mr. VOINOVICH, Mr. BROWN, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Dam Rehabilitation  
5       and Repair Act of 2009”.

1 **SEC. 2. REHABILITATION AND REPAIR OF DEFICIENT**  
 2 **DAMS.**

3 (a) DEFINITIONS.—Section 2 of the National Dam  
 4 Safety Program Act (33 U.S.C. 467) is amended—

5 (1) by redesignating paragraphs (3), (4), (5),  
 6 (6), (7), (8), (9), (10), (11), (12), and (13) as para-  
 7 graphs (4), (5), (6), (7), (8), (9), (10), (13), (14),  
 8 (15), and (16), respectively;

9 (2) by inserting after paragraph (2) the fol-  
 10 lowing:

11 “(3) DEFICIENT DAM.—The term ‘deficient  
 12 dam’ means a dam that the State within the bound-  
 13 aries of which the dam is located determines—

14 “(A) fails to meet minimum dam safety  
 15 standards of the State; and

16 “(B) poses an unacceptable risk to the  
 17 public.”; and

18 (3) by inserting after paragraph (10) (as redес-  
 19 igned by paragraph (1)) the following:

20 “(11) PUBLICLY-OWNED DAM.—

21 “(A) IN GENERAL.—The term ‘publicly-  
 22 owned dam’ means a dam that is owned by 1  
 23 or more State agencies or governments, local  
 24 governments, or municipal governments.

1                   “(B) INCLUSIONS.—The term ‘publicly-  
 2                   owned dam’ includes a dam owned by a non-  
 3                   profit organization that—

4                   “(i) is established by 1 or more State,  
 5                   local, or municipal governments; and

6                   “(ii) provides public benefits, such  
 7                   as—

8                   “(I) local flood control districts;

9                   “(II) regional public water utili-  
 10                  ties; and

11                  “(III) local irrigation districts.

12                  “(12) REHABILITATION.—The term ‘rehabilita-  
 13                  tion’ means the repair, replacement, reconstruction,  
 14                  or removal of a dam that is carried out to meet ap-  
 15                  plicable State dam safety and security standards.”.

16                  (b) PROGRAM FOR REHABILITATION AND REPAIR OF  
 17                  DEFICIENT DAMS.—The National Dam Safety Program  
 18                  Act is amended by inserting after section 8 (33 U.S.C.  
 19                  467f) the following:

20                  **“SEC. 8A. REHABILITATION AND REPAIR OF DEFICIENT**  
 21                  **DAMS.**

22                  “(a) ESTABLISHMENT OF PROGRAM.—The Director  
 23                  shall establish, within FEMA, a program to provide grant  
 24                  assistance to States for use in rehabilitation of deficient  
 25                  dams that are publicly-owned dams.

1 “(b) AWARD OF GRANTS.—

2 “(1) APPLICATION.—

3 “(A) IN GENERAL.—A State interested in  
4 receiving a grant under this section may submit  
5 to the Director an application for the grant.

6 “(B) REQUIREMENTS.—An application  
7 submitted to the Director under this section  
8 shall be submitted at such time, be in such  
9 form, and contain such information as the Di-  
10 rector may prescribe by regulation.

11 “(2) GRANT.—

12 “(A) IN GENERAL.—The Director may  
13 make a grant in accordance with this section  
14 for rehabilitation of a deficient dam to a State  
15 that submits an application for the grant in ac-  
16 cordance with the regulations prescribed by the  
17 Director.

18 “(B) PROJECT GRANT AGREEMENT.—The  
19 Director shall enter into a project grant agree-  
20 ment with the State to establish the terms of  
21 the grant and the project, including the amount  
22 of the grant.

23 “(c) PRIORITY SYSTEM.—The Director, in consulta-  
24 tion with the Board, shall develop a risk-based priority

1 system for use in identifying deficient dams for which  
2 grants may be made under this section.

3 “(d) ALLOCATION OF FUNDS.—The total amount of  
4 funds appropriated pursuant to subsection (h)(1) for a fis-  
5 cal year shall be allocated for making grants under this  
6 section to States applying for the grants for that fiscal  
7 year as follows:

8 “(1)  $\frac{1}{3}$  divided equally among applying States.

9 “(2)  $\frac{2}{3}$  divided among applying States based on  
10 the proportion that—

11 “(A) the number of non-Federal publicly-  
12 owned dams that the Secretary of the Army  
13 identifies in the national inventory of dams  
14 maintained under section 6 as constituting a  
15 danger to human health and that are located  
16 within the boundaries of the State; bears to

17 “(B) the number of non-Federal publicly-  
18 owned dams that are so identified and that are  
19 located within the boundaries of all applying  
20 States.

21 “(e) USE OF FUNDS.—None of the funds provided  
22 in the form of a grant or otherwise made available under  
23 this section shall be used—

24 “(1) to rehabilitate a Federal dam;

1           “(2) to perform routine operation or mainte-  
2 nance of a dam;

3           “(3) to modify a dam to produce hydroelectric  
4 power;

5           “(4) to increase water supply storage capacity;  
6 or

7           “(5) to make any other modification to a dam  
8 that does not also improve the safety of the dam.

9           “(f) COST-SHARING.—The Federal share of the cost  
10 of rehabilitation of a deficient dam for which a grant is  
11 made under this section may not exceed 65 percent of the  
12 cost of the rehabilitation.

13          “(g) CONTRACTUAL REQUIREMENTS.—

14           “(1) IN GENERAL.—Subject to paragraph (2),  
15 as a condition on the receipt of a grant under this  
16 section, a State that receives the grant shall require  
17 that each contract and subcontract for program  
18 management, construction management, planning  
19 studies, feasibility studies, architectural services,  
20 preliminary engineering, design, engineering, sur-  
21 veying, mapping, and related services entered into  
22 using funds from the grant be awarded in the same  
23 manner as a contract for architectural and engineer-  
24 ing services is awarded under—

1 “(A) chapter 11 of title 40, United States  
2 Code; or

3 “(B) an equivalent qualifications-based re-  
4 quirement prescribed by the State.

5 “(2) NO PROPRIETARY INTEREST.—A contract  
6 awarded in accordance with paragraph (1) shall not  
7 be considered to confer a proprietary interest upon  
8 the United States.

9 “(h) AUTHORIZATION OF APPROPRIATIONS.—

10 “(1) IN GENERAL.—There are authorized to be  
11 appropriated to carry out this section—

12 “(A) \$10,000,000 for fiscal year 2010;

13 “(B) \$15,000,000 for fiscal year 2011;

14 “(C) \$25,000,000 for fiscal year 2012;

15 “(D) \$50,000,000 for fiscal year 2013;

16 and

17 “(E) \$100,000,000 for fiscal year 2014.

18 “(2) STAFF.—There is authorized to be appro-  
19 priated to provide for the employment of such addi-  
20 tional staff of FEMA as are necessary to carry out  
21 this section \$400,000 for each of fiscal years 2010  
22 through 2014.

23 “(3) PERIOD OF AVAILABILITY.—Amounts  
24 made available under this section shall remain avail-  
25 able until expended.”.

1 **SEC. 3. RULEMAKING.**

2 (a) PROPOSED RULEMAKING.—Not later than 90  
3 days after the date of enactment of this Act, the Director  
4 of the Federal Emergency Management Agency shall issue  
5 a notice of proposed rulemaking regarding the amend-  
6 ments made by section 2 to the National Dam Safety Pro-  
7 gram Act (33 U.S.C. 467 et seq.).

8 (b) FINAL RULE.—Not later than 120 days after the  
9 date of enactment of this Act, the Director of the Federal  
10 Emergency Management Agency shall promulgate a final  
11 rule regarding the amendments described in subsection  
12 (a).

○